

ORIGINAL

OPEN MEETING

MEMORANDUM

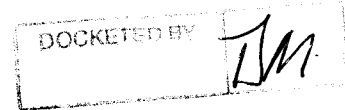
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Arizona Corporation Commission

DOCKETED

JUN 06 2012



TO: THE COMMISSION

2012 JUN -6 P 3:49

FROM: Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: June 6, 2012

RE: IN THE MATTER OF THE APPLICATION OF MCLEODUSA
TELECOMMUNICATIONS SERVICES, L.L.C. TARIFF FILING TO ADD VOIP
DEFINITIONS AND LANGUAGE. (DOCKET NO. T-03267A-11-0459)

On December 20, 2011, McLeodUSA Telecommunications Services, L.L.C. ("McLeod") filed an application to make changes to its tariff as it relates to intercarrier compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-PSTN")¹ traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make and receive voice calls using a broadband Internet connection instead of a phone line. On January 30, 2012, McLeod filed corrections to the December 20, 2011 tariff as requested by Staff.

On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN traffic.

The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic²:

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.);* local termination rates would not be affected. All such traffic is

¹ "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or terminates in internet protocol ("IP") format.

² The USF-ICC Order at para. 933, footnote 1869.

incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at \$0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.³ Under the transitional framework⁴:

- Default charges for “toll” VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

Based on the above language and Staff’s interpretation of the USF-ICC Order, Staff believed that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

Frontier Communications Corp. (“Frontier”) and Windstream Communications, Inc., the owner of McLeod, jointly filed a Petition for Clarification and/or Reconsideration (“Petition”) at the FCC to clarify, or reconsider its decision to state, that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply to the origination of such calls.

On January 31, 2012, Verizon filed objections to McLeod’s proposed tariff revisions. Verizon requests that the Commission require McLeod to revise and refile its proposed tariffs to reflect application of interstate switched access rates to all PSTN-VoIP traffic, including PSTN-originating/VoIP-terminating traffic. In addition, Verizon further requests the Commission require McLeod be required to give customers a reasonable time to submit initial intrastate VoIP factors and must make those factors applicable retroactively to January 1, 2012, once any disputes are resolved.

On March 28, 2012, AT&T Services, Inc. (“AT&T”) filed objections to McLeod’s proposed tariff revisions. AT&T states it objects that there is no mechanism to address VoIP-PSTN traffic that McLeod customers originate or terminate in IP format. AT&T states that the FCC’s order requires that interstate access rates apply to calls that originate or terminate in IP format. AT&T surmises that a reason these calls are not included in the proposed tariff is that McLeod does not provide retail VoIP services to its customers and if so, the tariff should be

³ The USF-ICC Order at para. 652.

⁴ The USF-ICC Order at para. 944.


amended to include such traffic if McLeod provides retail VoIP services in the future. Further, AT&T states McLeod's revised tariff indicates that the Percent VoIP Usage ("PVU") factors will be applied retroactively to January 1, 2012, which AT&T believes is inconsistent with the fact that the FCC Order became effective on December 29, 2011 and required immediate implementation.⁵ AT&T requests the proposed tariff be revised to eliminate the reference to interstate minutes of use and be applied retroactively to December 29, 2011.

On June 5, 2012, McLeod filed replacement tariff pages that include a mechanism to address VoIP-PSTN traffic that McLeod customers originate or terminate in IP format.

On April 24, 2012, the FCC issued an Order⁶ addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date⁷ of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."⁸

During its review of numerous proposed tariff revisions to implement the FCC's decision as it relates to VoIP-PSTN calls, Staff was informed by AT&T and others that they believed that because the FCC's Order regarding these calls became effective on December 29, 2011, the new rates should apply to traffic beginning on that date and that there should be a rate adjustment. The Commission's tariff approval procedures apply and the tariffs become effective after Commission approval.

Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of McLeod's proposed tariff revisions, as amended.



Steven M. Olea
Director
Utilities Division

SMO:LLM:sms/MAS

ORIGINATOR: Lori Morrison

⁵ The USF-ICC Order at para. 939, footnote 1890.

⁶ The USF-ICC Order, *Second Order On Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶35 and footnote 96.

⁷ Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."

⁸ Id., ¶35.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 GARY PIERCE

Chairman

3 BOB STUMP

Commissioner

4 SANDRA D. KENNEDY

Commissioner

5 PAUL NEWMAN

Commissioner

6 BRENDA BURNS

Commissioner

7
8 IN THE MATTER OF THE APPLICATION)
OF MCLEODUSA)
9 TELECOMMUNICATIONS SERVICES,)
L.L.C. TARIFF FILING TO ADD VOIP)
10 DEFINITIONS AND LANGUAGE.)
11
12
13

DOCKET NO. T-03267A-11-0459

DECISION NO. _____

ORDER

14 Open Meeting
June 19 and 20, 2012
15 Phoenix, Arizona

16 BY THE COMMISSION:

17 FINDINGS OF FACT

18 1. McLeodUSA Telecommunications Services, L.L.C. ("McLeod") is certificated to
19 provide telecommunications service as a public service corporation in the State of Arizona.

20 2. On December 20, 2011, McLeodUSA Telecommunications Services, L.L.C.
21 ("McLeod") filed an application to make changes to its tariff as it relates to intercarrier
22 compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-
23 PSTN")¹ traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to
24 make and receive voice calls using a broadband Internet connection instead of a phone line. On
25 January 30, 2012, McLeod filed corrections to the December 20, 2011 tariff as requested by Staff.

26 ...

27 _____
28 "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or
terminates in internet protocol ("IP") format.

Decision No. _____

1 3. On November 18, 2011, the Federal Communications Commission ("FCC") issued a
2 Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al.
3 (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current
4 process by which carriers pay for the use of each other's facilities and network. The FCC's name
5 for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are
6 filing revisions to their access tariffs to conform to the provisions of the Order. Specifically,
7 carriers are addressing access charges imposed on VoIP-PSTN traffic.

8 4. The FCC adopted the following intercarrier compensation framework for VoIP traffic,
9 in particular, VoIP-PSTN traffic²:

10 *Voice over Internet Protocol (VoIP):* The intercarrier compensation treatment of VoIP
11 traffic that is exchanged between LECs and other carriers has been the subject of long-
12 running disputes. This plan does not take a position on the appropriate intercarrier
13 compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the
14 Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier
15 compensation rates applicable to VoIP traffic exchanged between LECs and other carriers.
16 Such traffic will be rated at interstate access rates if the call detail indicates an "access"
17 call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All*
18 *"toll" traffic that originates in IP or terminates in IP will be subject to current interstate*
19 *access rates (regardless of whether it is interstate or intrastate) (Italics and underlining*
20 *added.);* local termination rates would not be affected. All such traffic is incorporated into
21 the overall transition as rates for terminating interstate access traffic are reduced and
22 eventually unified at \$0.0007 pursuant to the comprehensive reform plan described below.
23 *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

24 5. The USF-ICC Order also makes clear that on a going-forward basis payment
25 obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for
26 VoIP.³ Under the transitional framework⁴:

- 27 • Default charges for "toll" VoIP-PSTN traffic will be equal to interstate access
28 rates applicable to non-VoIP traffic, both in terms of the rate level and rate
structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable
reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in
relevant federal and state tariffs in the absence of an agreement for different
intercarrier compensation.

² The USF-ICC Order at para. 933, footnote 1869.

³ The USF-ICC Order at para. 652.

⁴ The USF-ICC Order at para. 944.

1 Based on the above language and Staff's interpretation of the USF-ICC Order, Staff believes that
2 interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

3 6. Frontier Communications Corp. ("Frontier") and Windstream Communications, Inc.
4 ("Windstream"), the owner of McLeod, jointly filed a Petition for Clarification and/or
5 Reconsideration ("Petition") at the FCC to clarify, or reconsider its decision to state, that initially
6 the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls
7 and intrastate charges will to apply for the origination of such calls.

8 7. On January 31, 2012, Verizon filed objections to McLeod's proposed tariff revisions.
9 Verizon requests that the Commission require McLeod to revise and refile its proposed tariffs to
10 reflect application of interstate switched access rates to all PSTN-VoIP traffic, including PSTN-
11 originating/VoIP-terminating traffic. In addition, Verizon further requests the Commission require
12 McLeod be required to give customers a reasonable time to submit initial intrastate VoIP factors
13 and must make those factors applicable retroactively to January 1, 2012, once any disputes are
14 resolved.

15 8. On March 28, 2012, AT&T Services, Inc. ("AT&T") filed objections to McLeod's
16 proposed tariff revisions. AT&T states it objects that there is no mechanism to address VoIP-
17 PSTN traffic that McLeod customers originate or terminate in IP format. AT&T states that the
18 FCC's order requires that interstate access rates apply to calls that originate or terminate in IP
19 format. AT&T surmises that a reason these calls are not included in the proposed tariff is that
20 McLeod does not provide retail VoIP services to its customers and if so, the tariff should be
21 amended to include such traffic if McLeod provides retail VoIP services in the future. Further,
22 AT&T states McLeod's revised tariff indicates that the Percent VoIP Usage ("PVU") factors will
23 be applied retroactively to January 1, 2012, which AT&T believes is inconsistent with the fact that
24 the FCC Order became effective on December 29, 2011 and required immediate implementation.⁵
25 AT&T requests the proposed tariff be revised to eliminate the reference to interstate minutes of use
26 and be applied retroactively to December 29, 2011.

27 _____
28 ⁵ The USF-ICC Order at para. 939, footnote 1890.

10. On April 24, 2012, the FCC issued an Order⁶ addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date⁷ of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."⁸

12. Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of McLeod's proposed tariff revisions, as amended.

1. McLeod is a public service corporation within the meaning of Article XV of the Arizona Constitution.

3. The Commission, having reviewed the filing and Staff's Memorandum dated June 2, concludes that approval of the proposed tariff revisions with the conditions recommended is reasonable, fair and equitable and therefore in the public interest..

...

...

⁷ Id., Footnote 96, “Accordingly, our revised rules will become effective 45 days after publication in the Federal Register.”

⁸ Id., ¶35.

ORDER

IT IS THEREFORE ORDERED that the proposed tariff revisions for McLeodUSA Telecommunications Services, LLC, as attached, be and hereby are approved.

IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, LLC, shall file its tariff, in compliance with this Decision, for Staff review and approval, within 10 days from the date of this Decision.

IT IS FURTHER ORDERED that this Decision be and hereby is effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of
this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:LLM:sms/MAS

Decision No. _____

1 SERVICE LIST FOR: MCLEODUSA TELECOMMUNICATIONS SERVICES, LLC
2 DOCKET NO.: T-03267A-11-0459

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23 Ms. Janice M. Alward
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CHECK SHEET

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Issued: December 20, 2011

Effective: January 19, 2012

By: William A. Haas
Vice President, Public Policy & Regulatory
One Martha's Way
Hiawatha, Iowa 52233

SECTION 1 – DEFINITIONS

Company or McLeodUSA or PAETEC

McLeodUSA Telecommunications Services, L.L.C. d/b/a PAETEC Business Services, the issuer of this tariff.

Customer

Denotes any individual, partnership, association, joint stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including but not limited to Interexchange Carriers (ICs), End Users and other telecommunications carriers or providers originating or terminating toll VoIP-PSTN traffic.

(T)
|
|
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(T)

End User

A person or entity that is a subscriber to, or customer of local exchange, exchange access, interexchange, CMRS, or other telecommunications service provided by McLeodUSA or another Exchange Telephone Company or other Carrier.

Exchange Telephone Company

Denotes any individual, partnership, association, joint-stock company, trust, or corporation engaged in providing switched communication within an exchange. For purposes of this tariff, a Exchange Telephone Company includes a CMRS provider or a certificated local exchange carrier ("LEC"), that may or may not be legally affiliated with McLeodUSA.

Intrastate Access Service

Provides for a two-point communications path between a Customer's premises or a collocated interconnection location and an end user's premises for originating and terminating intrastate calls.

LATA

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. NO. 4.

Local Switching

The McLeodUSA network system that permits an End user to make or receive calls that require local exchange access. With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "local switching" for purposes of this tariff shall be the point of interconnection associated with an NPA-NXX code. McLeodUSA Switching may also include a switch port leased by McLeodUSA from another LEC through a commercial or interconnection agreement.

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Vice President, Public Policy & Regulatory
One Martha's Way
Hiawatha, Iowa 52233

SECTION 1 – DEFINITIONS

Toll VoIP-PSTN Traffic

Denotes a customer's interexchange voice traffic exchanged with the Telephone Company in Time Division Multiplexing format over PSTN facilities, which originates and/or terminates in Internet Protocol (IP) format. "Toll VoIP-PSTN Traffic" originates and/or terminates in IP format when it originates from and/or terminates to an end user customer of a service that requires IP-compatible customer premises equipment.

(N)

(N)

Trunk

A communications path connecting two switching systems in a network that is used in the establishment of an end to end connection.

Trunk Group

A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communication paths are interchangeable.

User

A Customer or any other person authorized by the Customer to use service provided under this tariff.

Wire Center

A building in which one or more Local Switches, used for the provision of Exchange Services, are located.

Issued: December 20, 2011

Effective: January 19, 2012

By: William A. Haas
Vice President, Public Policy & Regulatory
One Martha's Way
Hiawatha, Iowa 52233

SECTION 2 – REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.4 Identification and Rating of VoIP-PSTN Traffic

(A) Scope

(1) VoIP-PSTN traffic is defined as traffic exchanged over the public switched telephone network ("PSTN") facilities that originates and/or terminates in Internet protocol ("IP") format. This section governs the identification of toll VoIP-PSTN ("toll VoIP") traffic that in the absence of an interconnection agreement will be subject to interstate switched access rates in accordance with the Federal Communications Commission Report and Order in WC Docket Nos. 10-90, etc., FCC Release No. 11-161 (Nov. 18, 2011) ("FCC Order") as it may hereinafter be amended or clarified. Specifically, this section establishes the method of distinguishing toll VoIP traffic from the customer's total intrastate access traffic, so that toll VoIP traffic will be billed in accordance with the FCC Order.

(2) This section will be applied to the billing of switched access charges to a customer that is a local exchange carrier only to the extent that the customer has also implemented billing of interstate access charges for VoIP-PSTN Traffic in accordance with the FCC Order.

(B) Rating of toll VoIP-PSTN traffic

The Telephone Company will bill toll VoIP-PSTN traffic which it identifies in accordance with this tariff section at rates equal to the Telephone Company's applicable tariffed interstate switched access rates.

Issued: December 20, 2011

Effective: January 19, 2012

By: William A. Haas
Vice President, Public Policy & Regulatory
One Martha's Way
Hiawatha, Iowa 52233

SECTION 2 – REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.4 Identification and Rating of VoIP-PSTN Traffic (cont'd)

(C) Calculation and Application of Percent-VoIP-Usage Factor

The Telephone Company will determine the number of toll VoIP traffic minutes of use ("MOU") to which it will apply its interstate rates under subsection (B), above, by applying an originating Percent VoIP Usage ("OPVU") factor to the total intrastate access MOU originated by a Telephone Company end user and delivered to the customer and by applying a terminating PVU ("TPVU") factor to the total intrastate access MOU terminated by a customer to the Telephone Company's end user. The OPVU and TPVU will be derived and applied as follows:

- (1) The Telephone Company will calculate and implement an OPVU factor representing a whole number percentage based on total traffic originated by Telephone Company end users in IP format and delivered to the customer in the State divided by the Telephone Company's total originated intrastate access MOU delivered to the customer in the State.
- (2) The customer will calculate and furnish to the Telephone Company a TPVU factor, along with supporting documentation, representing the whole number percentage of the customer's total terminating intrastate access MOU that the customer exchanges with the Telephone Company in the State that is sent to the Telephone Company and originated in IP format.
- (3) The TPVU and supporting documentation shall be based on information that is verifiable by the Telephone Company including but not limited to the number of the customer's retail VoIP subscriptions in the state (e.g., as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information. The customer shall not modify its reported PIU factor to account for VoIP-PSTN traffic.

Issued: December 20, 2011

Effective: January 19, 2012

By: William A. Haas
Vice President, Public Policy & Regulatory
One Martha's Way
Hiawatha, Iowa 52233

SECTION 2 – REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.4 Identification and Rating of VoIP-PSTN Traffic (cont'd)

(C) Calculation and Application of Percent-VoIP-Usage Factor
(cont'd)

(4) After the Telephone Company verifies the TPVU provided by the customer the Telephone Company will apply the TPVU factor as well as the OPVU developed by the Telephone Company to the respective terminating and originating intrastate access MOU as indicated in Sections (D) and/or (E) below.

In the event that the Telephone Company can not verify the customer's TPVU, the Telephone Company will request additional information to support the TPVU, during this time no changes will be made to the existing TPVU. The customer shall supply the requested additional information within 15 days of the Telephone Company's request or no changes will be made to the existing TPVU. If after review of the additional information, the customer and Telephone Company establish a revised and mutually agreed upon TPVU factor, the Telephone Company will begin using the new factor with the next bill period.

If the dispute is unresolved the customer may request that verification audits be conducted by an independent auditor, at customer's sole expense. During the audit, the most recent undisputed TPVU factor will be used by the Telephone Company.

Issued: December 20, 2011

Effective: January 19, 2012

By: William A. Haas
Vice President, Public Policy & Regulatory
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Hiawatha, Iowa 52233

SECTION 2 – REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.4 Identification and Rating of VoIP-PSTN Traffic (cont'd)

(D) Initial OPVU and TPVU Factor

In calculating the initial OPVU and TPVU factor(s), the Telephone Company will take the factor(s) provided by the customer into account retroactively to January 1, 2012, provided that the customer provides the factor(s) and supporting documentation, as specified in subsection (C) above to the Telephone Company no later than 15 days after the effective date of this tariff. If the customer does not furnish the Telephone Company with an TPVU factor pursuant to the preceding subsection (C), the initial factor will be zero.

(E) OPVU and TPVU Factor Updates

The customer may update the TPVU factor semi-annually using the method set forth in subsection (C), above. If the customer chooses to submit such updates, it shall forward to the Telephone Company, no later than 15 days after the first day of January and/or July of each year, a revised TPVU factor and supporting documentation based on data for the prior three months, ending the last day of December and/or June, respectively. If the customer submits a TPVU factor update the Telephone Company will, within 15 days of receipt of such request, provide and updated OPVU factor with supporting documentation to the customer. Within 15 days of receiving the customers revised TPVU factor the Telephone Company will verify and either request additional information or apply the TPVU and associated Telephone Company developed OPVU. Once verified by the Telephone Company the revised TPVU factor along with the revised Telephone Company developed OPVU will apply prospectively and serve as the basis for billing until superseded by a new verified factor.